



October 14, 2002

Mr. Craig Stoddart  
Assistant Criminal District Attorney  
Rockwall County  
1101 Ridge Road, Suite 105  
Rockwall, Texas 75087

OR2002-5800

Dear Mr. Stoddart:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170626.

The Rockwall County District Attorney's Office (the "district attorney's office") received a request for a copy of the file concerning Cause No. CR-02-0351. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that the district attorney's office received the request for information on July 22, 2002. You did not request a decision from this office until August 6, 2002. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. Because a proper request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). You raise section 552.108 as an exception to disclosure. However, you have not provided a compelling reason under section 552.108 to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Therefore, you may not withhold the requested information under section 552.108 of the Government Code. Additionally, you raise section 552.101 of the Government Code as an exception to disclosure. Section 552.101 can provide a compelling reason for overcoming the presumption of openness. *See* Open Records Decision No. 150 (1977).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information made confidential by other statutes. Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We conclude that the submitted information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the district attorney's office has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the submitted information is confidential pursuant to section 261.201 of the

Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, you must not release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge

this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Montgomery Meitler". The signature is fluid and cursive, with the first name "W." and last name "Meitler" being more distinct than the middle name "Montgomery".

W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 170626

Enc: Submitted documents

c: Ms. Laura S. Gonzales  
Legal Assistant  
Baker Botts  
2001 Ross Avenue  
Dallas, Texas 75201-2980  
(w/o enclosures)